



## INTERIOR BOARD OF INDIAN APPEALS

Citizen Potawatomi Nation v. Acting Oklahoma City Area Director,  
Indian Health Service

30 IBIA 182 (02/18/1997)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

CITIZEN POTAWATOMI NATION

v.

ACTING AREA DIRECTOR, OKLAHOMA CITY AREA, INDIAN HEALTH SERVICE

IBIA 97-88-A

Decided February 18, 1997

Docketed and Dismissed.

1. Indians: Indian Self-Determination and Education Assistance Act:  
Generally--Rules of Practice: Appeals: Extensions of Time

In order for the Board of Indian Appeals to grant an extension of time for filing a notice of appeal under 25 CFR Part 900, Contracts Under the Indian Self-Determination and Education Assistance Act, the Indian tribe or tribal organization must, within 60 days from receipt of the decision being appealed, file a request for an extension of time with a valid reason for not filing a timely notice of appeal.

APPEARANCES: John A. Barrett, Jr., Chairman, Citizen Potawatomi Nation.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On February 3, 1997, the Board of Indian Appeals (Board) received a notice of appeal from the Citizen Potawatomi Nation (Nation). The Nation sought review of a decision issued by the Acting Area Director, Oklahoma City Area, Indian Health Service (Area Director), which included a partial declination to contract under P.L. 93-638, the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. §§ 450-450m (1994).

The Nation did not include a copy of the Area Director's decision with its notice of appeal. A copy was provided by facsimile transmission on February 6, 1997. A second copy of the decision letter and a copy of the contract was provided by mail. The Board received the latter documents on February 10, 1997. <sup>1/</sup>

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<sup>1/</sup> Under 25 CFR 900.160(a), the Board is to determine within 5 days of receipt of a notice of appeal whether the appeal should be assigned to an Administrative Law Judge. However, subsection 900.160(a)(2) provides that when the Board is unable to make this determination on the basis of the materials in the notice of appeal, it shall make the decision within 5 days of receiving an additional statement or statements. In this case, 5 days from Feb. 10, 1997, was Feb. 15, 1997, which was a Saturday. Furthermore, Monday, Feb. 17, 1997, was a Federal holiday. Therefore, the period for making this determination expires on Feb. 18, 1997, the next day which is not a weekend or Federal holiday.

The Area Director's decision is dated December 6, 1996, and is stamped as received by the Nation on December 10, 1996. The decision states:

Within 30 days of the receipt of this decision, you may request an informal conference under 25 CFR 900.154, or appeal this decision under 25 CFR 900.158 to the Interior Board of Indian Appeals (IBIA). Should you decide to appeal this decision, you may request a hearing on the record. An appeal to the IBIA under 25 CFR 900.158 shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA. 22203. You shall serve copies of your Notice of Appeal on the Secretary [of Health and Human Services] and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. In lieu of filing such an appeal you may, at your option, initiate an action in a Federal District Court and proceed directly to such court pursuant to section 110(a) of [P.L. 93-638].

This language is required by 25 CFR 900.152. In addition, 25 CFR 900.158(a) repeats that a notice of appeal must be filed "within 30 days of receiving \* \* \* the initial decision." Subsection 900.158(b) states that a notice of appeal which is mailed "will be considered filed on the date the Indian tribe or tribal organization mailed it by certified mail."

The Nation received the Area Director's decision on December 10, 1996. The 30-day appeal period thus expired on January 9, 1997. However, the Nation's notice of appeal was not postmarked until January 30, 1997. Therefore, the notice of appeal is not timely.

Under 25 CFR 900.159, an extension of time may be granted for filing a notice of appeal. The section provides:

If the Indian tribe or tribal organization needs more time, it can request an extension of time to file its Notice of Appeal within 60 days of receiving \* \* \* the initial decision \* \* \*. The request of the Indian tribe or tribal organization shall be in writing, and shall give a reason for not filing its notice of appeal within the 30-day time period. If the Indian tribe or tribal organization has a valid reason for not filing its notice of appeal on time, it may receive an extension from the IBIA.

[1] Under section 900.159, the Nation had until February 10, 1997, in which to request an extension of time for filing its notice of appeal, and to provide a valid reason for not filing its notice of appeal within 30 days from its receipt of the decision. The Nation neither requested an extension of time, nor included in its notice of appeal information permitting a finding that it had a valid reason for not filing a timely notice of appeal.

Under these circumstances, the Board cannot grant the Nation an extension of time for filing its notice of appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of Health and Human Services, 25 CFR Part 900, this appeal from the Acting Oklahoma City Area Director's December 6, 1996, decision is docketed and dismissed.

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

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//original signed

Anita Vogt  
Administrative Judge